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JUN 29 2009

OFFICE OF PETITIONS

In re Application of	:	
Bihua Liu	:	
Application No. 10/634,526	:	ON APPLICATION FOR
Filed: August 5, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No. 1365-US	:	

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT filed on January 30, 2009. Applicant requests that the determination of patent term adjustment be corrected from seventeen (17) days to one thousand eighty-eight (1088) days. Applicant requests this correction, in part, on the basis that the Office will take in excess of three years to issue this patent.

The application for patent term adjustment is **GRANTED to the extent indicated.**

The Office has updated the PALM and PAIR screens to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is FOUR HUNDRED SIXTY (460) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed,

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date with regards to that request. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b). (This is true even

where a request for continued examination (RCE) was filed. The computer will not undertake the § 1.703(b) calculation until the actual date of issuance of the patent has been determined.

Applicant is given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Applicant may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

To the extent that the instant application for patent term adjustment requests reconsideration of the PTA at the time of the mailing of the Notice of Allowance, the request is **granted to the extent indicated.**

On January 14, 2009, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. Applicant was advised that the patent term adjustment to date was seventeen (17) days. The period of adjustment was 468 days of PTO delay and 451 days of applicant delay.

On January 30, 2009, the subject application for patent term adjustment was timely filed.¹

¹ Office records indicate that the issue fee was paid on February 27, 2009.

Applicant requests removal of the period of reduction of 451 Days under 37 CFR 1.704(c)(8) for the filing of an information disclosure statement (IDS) on January 9, 2009, after the filing of a reply to a non-final office action. Applicant asserts that no IDS was filed on January 9, 2009.

A review of Office records confirms that no IDS was filed on January 9, 2009. No paper was filed in this application on January 9, 2009. Accordingly, entry of a period of reduction of 451 days is not warranted, and will be removed.

Applicant asserts that a period of reduction of eight (8) days should be entered for the filing of a supplemental reply on October 24, 2007, eight (8) days after the filing of a reply, on October 16, 2007, to the office action mailed on July 16, 2007.

37 CFR 1.704(c)(8) states that circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed.

Accordingly, entry of a period of reduction of eight (8) days is warranted.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is four hundred sixty (460) days (468 days of office delay reduced by eight (8) days of applicant delay).

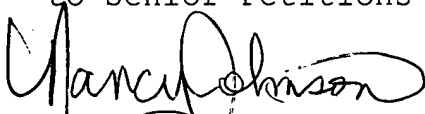
Applicants state that the patent is not subject to a terminal disclaimer.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a stylized flourish at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Day : Friday
Date: 6/26/2009

PALM INTRANET

Time: 18:08:36

PTA Calculations for Application: 10/634526

Application Filing Date:	08/05/2003	PTO Delay (PTO):	468
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	451
Post-Issue Petitions:	0	Total PTA (days):	460
PTO Delay Adjustment:	443		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
68	06/26/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		8	
67	06/26/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	451		
57	01/14/2009	MAIL NOTICE OF ALLOWANCE	333		38
56	01/09/2009	REFERENCE CAPTURE ON IDS			
55	01/09/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		451	38
54	01/14/2009	ISSUE REVISION COMPLETED			
53	01/14/2009	DOCUMENT VERIFICATION			
52	01/19/2008	ISSUE REVISION COMPLETED			
51	01/14/2009	DOCUMENT VERIFICATION			
50	01/14/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
49	10/24/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
48	10/22/2008	CORRESPONDENCE ADDRESS CHANGE			
47	07/08/2008	CASE DOCKETED TO EXAMINER IN GAU			
46	06/20/2008	NOTICE OF ALLOWABILITY			
41	11/04/2007	DATE FORWARDED TO EXAMINER			
40	10/24/2007	SUPPLEMENTAL RESPONSE			
39	10/27/2007	DATE FORWARDED TO EXAMINER			
38	10/16/2007	RESPONSE AFTER NON-FINAL ACTION			
37	10/18/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
36	10/17/2007	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
35	10/15/2007	CORRESPONDENCE ADDRESS CHANGE			
34	10/10/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			

33	07/16/2007	MAIL NON-FINAL REJECTION			
32	07/03/2007	NON-FINAL REJECTION			
31	06/20/2007	DATE FORWARDED TO EXAMINER			
30	06/20/2007	WITHDRAWAL OF NOTICE OF ALLOWANCE			
29	11/13/2006	MISCELLANEOUS INCOMING LETTER			
28	11/07/2006	MISCELLANEOUS INCOMING LETTER			
27	09/19/2005	FINISHED INITIAL DATA CAPTURE			
26	09/16/2005	APPLICATION IS CONSIDERED READY FOR ISSUE			
25	09/08/2005	ISSUE FEE PAYMENT VERIFIED			
24	09/08/2005	ISSUE FEE PAYMENT RECEIVED			
23	06/22/2005	EXPORT TO INITIAL DATA CAPTURE			
22	06/17/2005	MAIL NOTICE OF ALLOWANCE			
21	06/17/2005	MAIL EXAMINER'S AMENDMENT			
20	06/15/2005	ISSUE REVISION COMPLETED			
19	06/15/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
18	06/13/2005	EXAMINER'S AMENDMENT COMMUNICATION			
17	06/13/2005	NOTICE OF ALLOWABILITY			
16	05/26/2005	CASE DOCKETED TO EXAMINER IN GAU			
15	05/24/2005	DATE FORWARDED TO EXAMINER			
14	05/16/2005	RESPONSE AFTER NON-FINAL ACTION			
13	05/24/2005	CORRESPONDENCE ADDRESS CHANGE			
12	02/17/2005	MAIL NON-FINAL REJECTION	135		-1
11	02/16/2005	NON-FINAL REJECTION			
10	10/29/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	10/29/2004	CASE DOCKETED TO EXAMINER IN GAU			
8	07/06/2004	MISCELLANEOUS INCOMING LETTER			
7	09/13/2004	APPLICATION RETURN FROM OIPE			
6	09/13/2004	APPLICATION RETURN TO OIPE			
5	09/13/2004	APPLICATION DISPATCHED FROM OIPE			
4	09/14/2004	APPLICATION IS NOW COMPLETE			
3	10/22/2003	CLEARED BY OIPE CSR			
2	10/07/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	08/05/2003	INITIAL EXAM TEAM NN			

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